BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of	)	
Improving Public Safety Communications in the 800 MHz Band	)	**WT Docket No. 02-55**
Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels	)	

TO: The Wireless Telecommunications Bureau

FURTHER COMMENTS OF ENTERGY CORPORATION AND ENTERGY SERVICES, INC.

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Dated: September 23, 2002

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EXECUTIVE SUMMARY

The Consensus Plan fails to address several key components that must be present in any scheme that contemplates the relocation of large public safety and utility communications systems. Most egregiously, it fails to address the need for predictability in transition and the necessity of spectrum that is comparable not only in terms of kHz, but also in terms of technical capability and interference characteristics. Without adequate planning and sufficient, equivalent replacement spectrum, the Consensus Plan's relocation scheme risks disruption to critical utility communications, which is an unacceptable result.

The Consensus Plan also fails to adequately protect the rights of incumbents. Particularly, the management of the relocation process must not be delegated to Nextel, the Land Mobile Communications Council and the public safety Regional Planning Committees. These bodies either have severe conflicts of interest or are otherwise unqualified to manage this process. The FCC must take on this duty. A more self-executing scheme requires clearly defined rights for incumbent licensees to enable them to safeguard their operations, and to balance the negotiating process. At a minimum, licensees affected by the relocation process (including displaced General Category licensees and licensees already located in the proposed guard band) must have the following rights: 1) to approve the relocation plans for their systems; 2) to receive full reimbursement for relocation expenses; 3) to be protected from harmful interference; 4) to control the timeframe for their system's relocation; 5) to be reinstated to their original spectrum if the replacement spectrum proves to be unsuitable or if the relocation plan is abandoned; and 6) to seek recourse with the Commission. These safeguards must be

present to protect the integrity of the incumbent licensees' systems and the critical operations they support.

Furthermore, the timeframes claimed by Nextel and the Consensus Plan are unsupported on the record and have no basis in fact. Given the sequential nature of the Plan and the complexity of the systems that would have to be moved, Entergy believes that a better estimate would be 10-12 years to complete a relocation of this magnitude. Given this time frame, it is also likely that $500 million "pledge" from Nextel will have evaporated due to the limiting restrictions that Nextel wishes to place on its funding obligations. Nextel cannot be permitted to make its financial responsibility contingent upon: 1) resolution of challenges to the FCC's action in this matter within two years; and 2) the time limits imposed by its elaborate escrow arrangement. Otherwise, Nextel could end up walking away from the project well before its completion. This would result in a jumbled 800 MHz band that would likely be subject to worse interference problems.

The proposed five-year licensing "preference" is also unwarranted and unsustainable on the record. It would operate as a licensing freeze for entities that could otherwise license spectrum vacated by Nextel in the 800 MHz band. If a preference is indicated, it should encompass all public safety radio services as defined in the Balanced Budget Act of 1997, including utilities and other critical infrastructure licensees.

Finally, the limitations placed on the "non-cellular" allocation under the Plan are unwarranted. They would delay public safety access to advanced wireless capabilities and would retard the adoption of more spectrum efficient technologies. The proposed waiver process is also overly burdensome and unnecessary.

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TO: The Wireless Telecommunications Bureau

REPLY COMMENTS OF
ENTERGY CORPORATION AND ENTERGY SERVICES, INC.

Entergy Corporation and Entergy Services, Inc. (collectively, "Entergy"), by and through their undersigned telecommunications counsel, hereby file these additional comments in the above referenced docket in response to the Public Notice, DA 02-2202, issued by the Wireless Telecommunications Bureau ("WTB" or "Bureau") on September 6, 2002.[1] The Public Notice seeks comment on the so-called "Consensus Plan"[2] filed in this proceeding by a group of 17 parties.[3]

[1] Wireless Telecommunications Bureau Seeks Comment on "Consensus Plan" Filed in the 800 MHz Public Safety Interference Proceeding, *Public Notice*, DA 02-2202 (Sept. 6, 2002). By Public Notice dated September 18, 2002, the FCC expanded the scope of its request to include any other proposals filed in the Reply Comments in this proceeding. However, the FCC declined to extend the deadline for filing the additional comments. As such, Entergy's Comments are limited to addressing the Consensus Plan as directed by the FCC in its September 6, 2002 Public Notice. Entergy continues to encourage the

I. INTRODUCTION

Entergy has submitted both comments and reply comments in this proceeding, urging the Commission to adopt a measured, rational approach to the current interference problem. Entergy has recommended that the Commission implement modest rule changes to facilitate market-based and technological solutions. In the alternative, Entergy has supported relocation of public safety entities to the 700 MHz band. The Consensus Plan, however, rejects both suggestions, offering instead a miscellany of precariously linked propositions premised on questionable assumptions.

Entergy continues to believe that the recommendations made in its comments and reply comments, including codifying and updating the technical solutions of the *Best Practices Guide*, closing the loophole that permits a licensee to be "in compliance" with

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FCC to issue a Further Notice of Proposed Rulemaking to give parties adequate time to address all of the complex issues raised in these filings.

[2] "Consensus Plan" in this context is a misnomer. The plan fails to account for a number of 800 MHz constituents with significant operations, particularly electric utilities. While counsel for Entergy previously communicated its concerns about the Consensus Plan to the Plan's principal sponsors prior to the submission of the Private Wireless Coalition Comments and the Consensus Plan in the parties' Reply Comments, its concerns were not met. Entergy would welcome a plan that is built on a true consensus among all industry sectors. However, for the reason's discussed herein, Entergy has been unable to endorse the so-called "Consensus Plan," and refers to it as such for consistency and simplicity only.

[3] Reply Comments of Aeronautical Radio Inc., the American Mobile Telecommunications Association, the American Petroleum Institute, the Association of American Railroads, the Association of Public Safety Communications Officials - International, Forest Industries Telecommunications, the Industrial Telecommunications Association, Inc., the International Association of Chiefs of Police, the International Association of Fire Chiefs, the International Municipal Signal Association, the Major Cities Chiefs Association, the Major County Sheriffs Association, the National Sheriffs Association, Nextel Communications, Inc., the Personal Communications Industry Association, the Taxicab, Limousine and Paratransit Association and the National Stone, Sand and Gravel Association, WT Docket No. 02-55 (filed Aug. 7, 2002) ("Consensus Plan").

the terms of its license while still causing interference, adopting flexible licensing rules to facilitate channels swaps and other market-based solutions, and providing for arbitrated resolution of interference disputes, represent a carefully balanced and viable solution. Even if, however, the FCC determines that realignment is ultimately necessary and the 700 MHz plan is unattainable, the FCC should not implement the Consensus Plan in its current form. As described more fully below, the Consensus Plan fails to provide a certain and predictable plan for relocation to comparable spectrum, fails to protect the rights of incumbents, fails to support its assertions regarding timeframes for completion, fails to provide adequate funding, fails to give good reason for instituting an effective freeze on Business and I/LT licensing, and fails to justify its proposed restrictions on cellular operations.

II. THE CONSENUS PLAN FAILS TO ADDRESS THE NEED FOR PREDICTABILITY AND COMPARABILITY

The Plan leaves two significant issues unaddressed: ensuring predictability in any transition process and ensuring that any replacement spectrum is comparable to the spectrum from which a licensee is forced to move. As discussed herein, absent significant safeguards in these areas, the Consensus Plan is inadequate to ensure the protection of incumbent systems and must not be adopted.

A. The Consensus Plan Fails To Provide For Predictability And Certainty In Transition

In the event that the FCC determines to adopt an in-band realignment plan, it is of paramount importance that a complete blueprint for relocation is laid out well in advance of any proposed move. Particularly in the case of electric utilities and other providers of

critical infrastructure services, seamless and continuous coverage is an absolute necessity.[4] As the FCC itself noted in the NPRM in this docket with respect to the suggestion that utilities be relegated to secondary status in the 800 MHz band, it is unwise to require a station associated with the restoration of electrical service to discontinue service precipitously.[5] This logic is equally applicable in the context of the careful planning that would be required to relocate a utility's system.

Accordingly, a transition should not be conducted in a piecemeal fashion, which could risk disruption to critical utility communications. It is vital that any plan to reallocate utility frequencies is completely formulated, vetted and funded well in advance of any contemplated move. This would include, at a *minimum*: 1) identification and approval of comparable spectrum for all affected frequencies and a guarantee of availability;[6] 2) available and committed funding for the complete transition; 3) detailed plans for transition logistics; 4) complete frequency coordination; 5) a guarantee that the

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[4] Congress has recently reaffirmed the vital importance of the Nation's critical infrastructure and the importance of ensuring its integrity in the USA PATRIOT Act, stating that is shall be the policy of the United States that " any physical or virtual disruption of the operation of the critical infrastructures of the United States are rare, brief, geographically limited in effect, manageable, and minimally detrimental to the economy, human and government services, and national security of the United States." Uniting and Strengthening America by Providing Appropriate Tools to Intercept and Obstruct Terrorism (USA PATRIOT Act), Pub. L. No. 107-56, § 1016, 115 Stat. 400 (2001).

[5] In re Improving Public Safety Communications in the 800 MHz Band, Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels, WT Docket No. 02-55, *Notice of Proposed Rulemaking*, FCC 02-81, at 33 (rel. March 15, 2002), 67 Fed. Reg. 16531 (April 5, 2002) ("NPRM").

[6] Ensuring availability would require at a minimum that the Commission 1) compel Nextel to provide the Commission with a list of licenses that it would give up; and 2) prohibit Nextel from assigning, exchanging, canceling or deleting any licenses or frequencies for the duration of the relocation process, other than in connection with a frequency swap needed to effectuate the realignment plan. Any channels not needed to relocate incumbent systems should revert to the Commission.

system would not have to be relocated more than once; and 6) the right to be returned to their previous channel assignments after a trial period if the conditions are unfavorable in the new spectrum environment or if the larger relocation scheme is abandoned for any reason. These safeguards must be in place to ensure that displaced licensees are able to carry on their primary business functions and fulfill their mission critical tasks unimpeded.

B. The Proposed Replacement Spectrum Elsewhere In The 800 MHz Band Is Not Comparable To Entergy's Current Spectrum Home

As Entergy and numerous other parties have asserted throughout this proceeding, if any incumbent is required to relocate, the replacement spectrum they receive must be comparable to the spectrum vacated. However, the simplistic assertion made by Nextel that a "kHz-to-kHz" replacement is sufficient to meet the comparability requirement is mistaken. Technical specifications and operating capability of the new spectrum must also remain intact. Moreover, the licensee should not be subjected to a more hostile interference environment in the new location. Under the Consensus Plan, however, replacement spectrum for displaced licenses is not comparable.

As an initial matter, Entergy is puzzled by the incompatible statements in the Consensus Plan with respect to who will populate the proposed guard band. On the one hand, the Consensus Plan asserts that the guard band will house "campus" systems or other "interference resistant" systems. On the other hand, the Consensus plan designates the guard band as the first choice location for displaced General Category licensees. Entergy is unsure how to reconcile these two statements, and fears that despite the fact that it does not operate a "campus" system and is not an "interference resistant" system

(whatever that term means), its General Category licenses will be nevertheless be shunted into the proposed guard band. In addition, Entergy's current operations in the proposed guard band will likely be subject to additional interference, and the Consensus Plan makes no effort to provide Business and I/LT licensees in this portion of the spectrum with an opportunity to protect their operations.

As a more general matter, it is not sound spectrum policy to discount spectrum used by Business and I/LT licensees by requiring them to serve as a buffer between Nextel and public safety. Business and I/LT licensees, and utilities in particular, rely upon their private networks to provide critical communications capability, which is used to ensure the integrity and reliability of the nation's electric infrastructure and to assure the safety of utility workers in the field. They can ill afford interference in their communications, and placing their systems in an interference prone environment is inadvisable given the nature of their operations. As noted by UTC, critical infrastructure entities must be able to rely on the same level of interference free, reliable communications as traditional public safety licensees, as they often share systems and respond to many of the same emergencies.[7]

III. THE RIGHTS OF INCUMBENTS MUST BE PROTECTED

As currently formulated, the Consensus Plan is dangerously incomplete in many respects and fatally flawed in others. A primary area of deficiency is protecting the rights of incumbents. In the event that an in-band relocation plan is adopted, the Commission must take the considerations below into account in order to ensure that licensees affected

[7] Reply Comments of the United Telecom Council, WT Docket No. 02-55 at 8 (Aug 7, 2002) ("UTC Reply Comments").

by the relocation process can adequately safeguard their communications systems and the critical operations they support.

A. The Consensus Plan Would Have A Significantly Detrimental Impact on Entergy's Operations

General Category frequencies comprise a significant portion of Entergy's system, accounting for approximately 23% of Entergy's 800 MHz multi-state wide area communication system. Should Entergy be forced to vacate its General Category frequencies, the Consensus Plan calls for Entergy to be relocated first to the newly designated "guard band" at 814-816/859-861 MHz, and second to other channels at 809-814/854-859 MHz if the guard band is unavailable. In addition, Entergy already has a significant number of licenses in the 814-816/859-861 MHz band that would suddenly be located in a guard band with significantly different interference characteristics. According to the Consensus Plan's proponents, this will result in Entergy's operations being at significant risk of interference.[8] Putting utilities at risk for harmful interference is essentially the same as setting them up for a precipitous discontinuance of service, an outcome that the FCC itself implicitly rejected in the NPRM in this docket.[9]

Relocating licensees to the proposed guard band penalizes displaced General Category licensees that currently neither receive nor cause interference, including Entergy. As currently configured, the Consensus Plan's General Category relocation would affect *all* of Entergy's operations in New Orleans and Beaumont, which represent

[8] Consensus Plan at 12 (recommending that critical public safety communications currently located in the 814-816/859-861 MHz range should be relocated or rearranged such that less critical public safety frequencies are closer to the cellularized block).

[9] NPRM at para. 34.

significant service areas for Entergy. In Arkansas, Entergy would have to modify approximately 70% of its sites and retune all the mobiles in the state. In Louisiana, control channel frequencies would have to be changed at approximately 82% of Entergy's sites in the state.

In addition, approximately 18% of Entergy's 800 MHz operations are already located in the proposed "guard band," which would be subject to additional interference from Nextel. Altering these keystone pieces of Entergy's system will have a profound impact on Entergy's operations, and placing them in a more interference prone environment would upset a finely engineered system that is not contributing to a problem created and perpetuated by Nextel's engineering.

B. Control of the Relocation Process Must Not Be Delegated As Suggested By the Consensus Plan

The Consensus Plan asks the Commission to delegate implementation and coordination of the proposed relocation process to a group including Nextel, the Land Mobile Communications Council ("LMCC"), and the public safety Regional Planning Committees ("RPCs"). Entergy strenuously objects to this configuration, which fails adequately to balance the rights of the incumbent and the incoming licensee. There are several problems with this proposal.

First, the LMCC is an association of associations, and as such is far removed from the specific interests of an individual licensee that may be facing relocation. Accordingly, this body is not equipped to protect the interests of licensees who have a significant, personal stake in ensuring the integrity of their systems. Moreover, as an organization largely controlled by frequency coordinators, LMCC has an interest in the

creation of events that will require coordination and the associated coordination fees. The same can be said for the other frequency coordinator signatories to the Consensus Plan, including ITA and PCIA. Given this conflict of interest, their participation in administering relocation cannot be permitted.

Second, the conflict of interest in permitting Nextel to take part in the administration of the process is obvious, and cannot be sustained. One of Nextel's primary goals, as necessitated by its public character, is to maximize value and return for its shareholders. Despite its seemingly altruistic support of public safety communications, its commercial interest in this proceeding must not be forgotten. Nextel cannot be permitted to determine the relocation procedure and schedule for its commercial competitors. Nor can Nextel be permitted to dictate the fate of the private systems operated by utilities and critical infrastructure entities, which Nextel perceives as impediments to the growth of its customer base.[10] That is, as long as utilities have access to spectrum on which they can develop systems to meet their unique service and coverage needs, they generally have no need for Nextel's services. Nextel's participation, therefore, is wholly inappropriate.

Finally, the participation of the Regional Planning Committees in this process is not feasible from a practical standpoint. The RPCs are composed primarily of regional volunteers working for state and local government agencies who will have their hands full with the relocation of the NPSPAC channels from the upper portion of the band to the lower portion. They would have neither the manpower nor the personal stake

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[10] *See, e.g.* Comments of Nextel Communications, Inc., *In re National Telecommunications Information Administration (NTIA) Report on Current and Future*

necessary to direct the mass relocation of Business, I/LT and SMR licensees contemplated by the Consensus Plan.

Each system potentially affected by a relocation plan is unique, and each system will have individualized needs and priorities to protect. As currently configured, the Consensus Plan would place all of the decision-making in the hands of a few entities that have no personal stake in the integrity of an individual utility's system. Moreover, they do not have the knowledge of a specific system necessary to adequately formulate a relocation plan. This poses an unacceptable risk to these systems, and is therefore not in the public interest. If this process is to be implemented and governed by any particular body, it must be the FCC. The FCC provides the only unbiased forum for the concerns that will arise in a large-scale relocation process. This responsibility cannot be delegated to entities that have significant conflicts of interest.

If the FCC wishes this process to be largely self-executing, incumbent licensees must be given specific rights, as described below, that will allow them to negotiate for relocation and reimbursement, with recourse to the Commission for dispute resolution. As currently configured, affected licensees have no recourse to combat the demands of this triumvirate, however unrealistic.

C. Licensees Affected by the Relocation Must have Enumerated and Enforceable Rights

The Consensus Plan provides no protection to incumbents that would be forced to relocate. Affected licensees must have an enforceable set of rights to ensure the integrity

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Spectrum Use by the Energy, Water and Railroad Industries, DA 02-361 (Filed March 6, 2002).

of their systems and the operations they support, and to permit them to participate in the plans for relocation of their systems. This is particularly true for critical infrastructure licensees like Entergy, whose communications systems support the provision of essential public services. In this respect, utilities and other critical infrastructure licensees are entitled to no less protection than public safety, and should be entitled: 1) to approve the relocation plan for their system, 2) to full reimbursement for relocation expenses, 3) to be protected from harmful interference, 4) to control the timeframe for their system's relocation, 5) to be reinstated to their original spectrum if the replacement spectrum proves to be unsuitable of if the relocation plan is abandoned, and 6) to seek recourse with the Commission. Only with these safeguards in place can incumbent licensees adequately protect the investment in their communications systems and the integrity of the critical operations they support.

With respect to those operations already located in the proposed guard band, the Consensus Plan gives public safety licensees the option relocating to other spectrum at 809-814/854-859 MHz if the licensee determines that its operations will be subject to harmful interference resulting from the reconfiguration of the band. Critical infrastructure licensees, including electric utilities, should have similar rights to relocation out of the proposed guard band. This should also include the enumerated rights detailed above.

IV. THE CONSENSUS PLAN'S TIMEFRAMES ARE UNREALISTIC AND FAIL TO ACCOUNT FOR THE COMPLEXITIES AND UNIQUE NEEDS OF INCUMBENT SYSTEMS

A. The Consensus Plan Offers No Study Or Data To Support Time Frames

Nextel's reply comments and the Consensus Plan state blandly that the plan's relocation scheme can be *implemented completely* in 36-48 months.[11] There is however, no support for this statement in the record, and neither Nextel nor the proponents of the Consensus plan offer any empirical or other evidence on this issue. This claim is particularly over-optimistic given the sequential nature of the Consensus Plan's logistics and the nature of the systems that would have to be relocated.

First, Nextel would have to give up channels between 854-859 MHz to make room for displaced public safety licensees operating in the proposed NPSPAC and guard band allocations. Then, public safety operations in these bands would have to relocate to the recently vacated Nextel channels. This step alone would likely take at least three years, given the sensitive nature of public safety communications and the need to ensure a seamless transition. Further, under the Consensus Plan, public safety licensees are not required to move until funding is available from a third party. However, Nextel's comments make it clear that Nextel will not let go of the purse strings, insisting that it be permitted to approve or disapprove public safety expenditures before *reimbursement* is to be had.[12] In this respect, public safety systems must still make the initial capital outlay for the transition, and run the risk of not being fully reimbursed. This may be

[11] Reply Comments of Nextel Communications, Inc., WT Docket No. 02-55 at 29 (filed Aug. 7, 2002) ("Nextel Reply Comments").

[12] Nextel Reply Comments at 31-32.

problematic with the extended public safety buying cycles and the necessity of securing up front funding.

Site-based Business, I/LT and SMR systems in the proposed NPSPAC band would then move to the guard band or to other available spectrum in the 854-859 MHz band if guard band spectrum is unavailable, followed by EA licensees. With respect to utility licensees in this band and Entergy in particular, many of these systems are wide area, employing carefully structured frequency re-use plans. Relocating these frequencies, particularly Entergy's control frequencies, will take considerable planning and careful implementation.[13] It is likely that utility relocation alone under this plan would take at least three years as well.

Operations in the current NPSPAC band would then be mapped down to the new allocation on a region by region basis. Again, given the densely packed nature of these operations and the complex coordination that was involved in their initial establishment, this process will likely take a considerable amount of time. Finally, Nextel would relinquish its remaining licenses in the 854-861 MHz band and relocate to the vacated NPSPAC block. All this, of course, would be contingent upon funding which may or may not be present and the availability of which is a condition precedent to public safety's relocation.

As such, Entergy believes that ten to twelve years is a more realistic estimate of the time that it would take to execute the multiple complex maneuvers contemplated above, assuming there were no additional complicating factors. With relocation ongoing

[13] Because of limitations on the number of control channels that can be programmed in mobile units, licensees of wide area systems, such as Entergy, must design systems to re-

well into the next decade, Nextel's funding commitment, as described *infra*, will have evaporated and the job will be left half done. Since the Plan does not call for Nextel to vacate the interleaved spectrum until all other relocations have been completed, this would be a fate worse than the current situation in the 800 MHz band.

B. Nextel's Funding Restrictions Place A Practical Time Limit On Relocation That Should Not Be Permitted

The funding mechanism outlined by Nextel in its reply comments also places a practical time limit on relocation, which should not be permitted. Nextel's reply comments provide that its contribution to the relocation fund will be *fully* refunded if, within two years, the FCC has not: 1) resolved all appeals and challenges to the Consensus Plan, 2) established an independent fund administrator, 3) established guidelines to identify eligible retuning costs and 4) established a mechanism for verifying reimbursement claims.[14]

First, Nextel should not be permitted to condition its financial liability by dictating what the *FCC* must do and the time frame within which it must do it. Second, this creates an artificial deadline that could be detrimental to the relocation process. Third, licensees must not be pressured into relinquishing their right to request reconsideration from the FCC or review in a U.S. Circuit Court of Appeals for fear of losing the possibility of funding. This imperils the integrity of the judicial review process, and is incompatible with the rights of the participants in the regulatory process.

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use central channel frequencies as intensely as possible, consistent with frequency coordination and good engineering practices.

[14] Nextel Reply Comments at 32, n. 67.

Beyond the two-year time limit, Nextel creates an additional contrived deadline through its escrow arrangement. Under its proposal, Nextel would contribute $50 million to a reimbursement fund, while placing an additional $450 million in an escrow account. Once the order implementing the Consensus Plan becomes final and unappealable and the other prerequisites described above are met, an additional $50 million is transferred. The remaining funds in escrow would be transferred in $50 million increments when the fund dips below the $50 million mark.

The second $50 million transfer, however, sets in motion a separate artificial clock. After the fourth anniversary of the second transfer, no further funds would be transferred from escrow, and on the second anniversary of Nextel's last deposit, money remaining in the fund would be returned to Nextel.[15] Given that relocation will likely take at least 10 years, there is a strong possibility that Nextel could have a significant amount of its "contribution" refunded to it, while the relocation process remains incomplete. This result is unacceptable, and would solely be the product of Nextel's attempt to limit its liability for the problem it created.

V. THE CONSENSUS PLAN STILL FAILS TO PROVIDE ADEQUATE FUNDING

As discussed in detail below, the funding necessary to complete a massive relocation also remains a problem. The Consensus plan effectively punts on this issue, relying on Nextel's unenforceable "pledge" of $500 million and assuming that remaining funding for public safety will simply be supplied at some unspecified point in the future from some unspecified source. Moreover, it again fails to address the issue of funding

[15] Nextel Reply Comments at 32.

for Business, I/LT and SMR relocation. In this regard, the funding proposed in the current iteration of the Consensus Plan does not materially differ from the funding proposal of the original plan offered by Nextel in this proceeding, which was soundly rejected by virtually all commenting parties. The funding proposal in the Consensus Plan should similarly be rejected.

A. The Consensus Plan Fails To Adequately Address The Issue Of Funding, For Both Public Safety And Non-Public Safety Licensees

The inadequacy of the funding proposals associated with various interference solutions has been one of the most commented upon issues in this proceeding. Numerous parties, including public safety commenters, found Nextel's original plan and its offer of $500 million to fund public safety relocation to be grossly insufficient for two reasons. First, it would not cover the total cost of relocation for public safety.[16] Second, it would not reimburse the costs that private wireless licensees, including Business and I/LT, would incur.[17] *Nothing has changed in the Consensus Plan*. In fact, Nextel has attached even more strings to its $500 million "pledge" in the form of time limits. Further, while acknowledging that incumbent licensees, including Business, I/LT and traditional SMR should not be forced to pay for relocation costs caused by Nextel's

[16] See, *e.g.* Comments of Motorola, WT Docket No. 02-55 at 25 (filed May 6, 2002) (estimating that an in-band realignment would cost between $1.1 billion and $1.5 billion for public safety alone).

[17] See, *e.g.*, Comments of Cascade Two Way Radio, WT Docket No. 02-55 at 3 (filed May 3, 2002); Comments of Rees Communications, WT Docket No. 02-55 at 1 (filed May 6, 2002); *see generally*, Comments of Duke Energy Corp. WT Docket No. 02-55 (filed May 6, 2002); Comments of Cinergy Corp., WT Docket No. 02-55 (filed May 6, 2002), Comments of the United Telecom Council, WT Docket No. 02-55 (filed May 6, 2002).

interfering operations, there is "no formal plan at this time" to provide funding for relocation of these licensees.[18] The plan is thus incomplete, and cannot be implemented in its current form.

B. Licensees Forced To Relocate Should Not Be Required To Bear The Cost Of Such Relocation

As noted by Carolina Power and Light and TXU Business Services, there is nothing in the record that indicates that utilities or other Business and I/LT licensees are the cause of the current interference situation.[19] Entergy reiterates its position that Commission precedent does not support requiring innocent licensees to fund their own relocation to solve the interference problems caused by another licensee. The Consensus Plan essentially agrees with this position, but offers no solution. In this highly important regard, the plan is incomplete. The FCC must not adopt a plan that leaves such a vital component to later resolution, if, in fact, a resolution of the issue can even be found.

C. Nextel Cannot Be Permitted To Limit Its Liability

Nextel concedes that $500 million would be insufficient to cover the expenses that would likely be incurred by public safety under the Consensus Plan.[20] It remains, however, within Nextel's "discretion" to provide additional funding. Nextel claims that this set up will compel both Nextel and public safety to actively seek out alternative sources of funding, including the possibility of funding provided by Congress. This

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[18] Consensus Plan at 19, n. 56.

[19] Reply Comments of Carolina Power and Light and TXU Business Solutions, WT Docket No. 02-55 at 5 (filed Aug. 7, 2002).

[20] Nextel Reply Comments at 30.

funding, however, is speculative at best. Furthermore, funding for the relocation of non-public safety licensees also remains unaddressed.

As stated time and time again throughout the comments in this proceeding and in the interference reports of APCO, Nextel is the party responsible for the vast majority of public safety interference. Nextel should not be permitted to limit its liability in this matter by simply throwing out a number and denying responsibility for costs in excess thereof.

D. Nextel's "Escape Hatches" Will Allow It To Walk Away Before The Job Is Completed And With No Consequences

As discussed above, Nextel's funding mechanism places artificial constrictions on the time frame within which a band realignment would have to occur. This mechanism also functions as a method by which Nextel can extract itself from the process without consequence. That is, if adopted in its current form, Nextel would be permitted to walk away from the project if even one of its numerous conditions is not met.

Assuming that interference can be mitigated through the in-band relocation proposed, there is a strong possibility that Nextel may walk away with the job half finished. In this respect, half of a relocation is worse than no relocation. If for example, Nextel's timetable runs out or funding is otherwise depleted, the result would be an 800 MHz band with public safety packed into center of the band, and sandwiched between Nextel on one end and cellular on the other and subject to even more interference than before. Moreover, Nextel would be permitted to remain on channels in the "interleaved" portion of the band until all other relocations had been completed.

Funding, therefore, must be fully accounted for from the outset, and must be available throughout the entire relocation process, no matter how long it may take. To do otherwise could leave all parties, except Nextel, much worse off than when the project began.

VI. THE FIVE-YEAR LICENSING PREFERENCE WILL RESULT IN AN EFFECTIVE LICENSING FREEZE FOR UTILITIES

The five-year preference proposed by the Consensus Plan, which would permit public safety to license spectrum vacated by Nextel, would operate as a licensing freeze for current Business and I/LT entities and would prevent them from licensing spectrum for which they would otherwise be eligible. Furthermore, given that the five-year "preference" will not begin until *after* the NPSPAC block has been relocated in a given region,[21] this could result in an effective freeze until well past 2010, even assuming that the Consensus Plan could be implemented in three to four years as claimed. This is particularly problematic for utility licensees, who are already struggling to find the spectrum necessary to expand and upgrade their systems to meet the demands of their changing electric customer base. As American Electric Power noted, utilities must be permitted to continue to expand and modify their systems to meet their critical communications needs.[22] Preventing additional licensing by utilities and other I/LT licensees in this manner will dramatically limit their ability to adapt to their changing consumer base, and will likely result in less efficient and effective communications, an increased likelihood of power loss, and longer repair times for power outages.

[21] Consensus Plan at 15-16.

[22] Reply Comments of American Electric Power Company, Inc., WT Docket No. 02-55 at 8 (filed Aug. 6, 2002).

Accordingly, the licensing preference proposed by the Consensus Plan is not in the public interest.[23]

Moreover, the licensing freeze could potentially result in a significant amount of spectrum lying fallow. For example, if Nextel vacates a frequency and no public safety entity chooses to license it, the frequency will remain inaccessible to other licensees. It will essentially continue in stasis, as the proposal would prevent a utility from being eligible to license it from the Commission, and there would be no existing licensee with whom a utility wishing to expand its system could negotiate in order to otherwise license the spectrum. Given the increasing scarcity of spectrum available for critical infrastructure entities and the strain on their systems, this is an unacceptable outcome.

To avoid this result, utilities and other critical infrastructure entities should be permitted to license the channels vacated by Nextel. This can be accomplished by expanding the eligibility to Business, I/LT and SMR, or identifying the class of eligible licensees as those providing "public safety radio services" as defined in the 1997 Balanced Budget Act.[24] That is, the class of entities eligible to license Nextel's vacated spectrum should include "private internal radio services used by utilities, railroads, metropolitan transit systems, pipelines, private ambulances, and volunteer fire departments."[25]

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[23] Nextel's conditional offer to relinquish its 900 MHz channels does not afford relief to 800 MHz utility licensees. Use of 900 MHz channels would require a complete system change-out, an unnecessarily disruptive and expensive proposition for a utility that is merely expanding its existing radio system.

[24] 47 U.S.C. § 309(j)(2).

[25] H.R. Conf. Rep. No. 105-217 at 572, *reprinted in* 1997 U.S.C.C.A.N. 176, 192.

VII. RESTRICTIONS ON THE "NON-CELLULAR" ALLOCATION ARE NOT JUSTIFIED

The suggested restriction on the "non-cellular" allocation under the Compromise Plan will do little to protect public safety systems from interference. Instead, as explained below, this restriction and the accompanying waiver process will delay public safety access to advanced wireless data capabilities and will retard the adoption of more spectrum efficient technology.

A. It Has Not Been Established That Cellular Architecture *Per Se* Is Incompatible With Public Safety Operations, Only That Nextel's Operations Are Incompatible

The Consensus plan proposes to prohibit "cellularized" operations in the 851-861 MHz band, and defines "cellular system" according to the Commission's *Second Report and Order* in the 700 MHz Guard Band proceeding.[26] This definition, according to the consensus plan, would prohibit systems that have all of the following characteristics: 1) more than 5 overlapping interactive sites featuring hand-off capability; 2) sites with antenna heights of less than 100 feet above ground level or HAAT of less than 500 feet; and 3) sites with more than 20 paired frequencies.[27]

The record, however, does not support the assertion that these specific characteristics *per se* result in the interference that is currently being reported. Rather,

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[26] Consensus Plan at 10, n. 39. It should be noted that the definition of cellular in the 700 MHz Guard Band proceeding was not nearly as specific as that proposed in the Consensus Plan.

[27] It is not clear whether the cellular prohibitions would apply on a site-by-site basis, or a system-by-system basis. For example, if a system of more than 5 overlapping interactive sites included some "high sites" with more than 20 channels, and same "low sites" with fewer than 20 channels, would the system be a "cellular" system under the proposed

the problem appears to be largely specific to Nextel's system operations. Southern LINC, for example, operates an iDEN system that would appear to qualify as a "cellularized" system under the above definition without encountering the interference problems that plague Nextel.[28] This fact alone would indicate that there are other factors at work beyond the "cellular" architecture itself that produce interference to public safety. It would therefore be folly to place a blanket prohibition on cellular architectures below 861 MHz based on one company's poor track record.

B. The Restriction Would Inhibit Growth And Innovation And Retard Transitioning To More Spectrum Efficient Technologies

The FCC has established a policy that promotes the use of spectrum efficient equipment and encourages the implementation of advanced, innovative system architectures. As recently stated by Chairman Michael Powell, the failure to promote innovation could result in a situation in which "we could freeze ourselves in time to the detriment of the market, the technology and our citizens."[29] Prohibiting a certain technology or architecture without record evidence that this technology or architecture is a problem smacks of "industrial policy" intended to preserve Nextel's position as the dominant operator of "cellularized" systems in the 800 MHz band.[30]

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definition? Likewise, the Consensus Plan does not define what is meant by "interacting overlapping sites."

[28] See, *e.g.*, Comments of Skitronics, LLC, WT Docket No. 02-55 at 21 (filed May 6, 2002).

[29] FCC Chairman Michael K. Powell Outlines Critical Elements of Future Spectrum Policy, Press Release (June 6, 2002).

[30] Nextel is already on record arguing that utilities should not be permitted to install advanced communications. *See, e.g.* Comments of Nextel Communications, Inc., *In re National Telecommunications Information Administration (NTIA) Report on Current and*

Should the FCC choose to prohibit cellular operations below 861 MHz, however, this is precisely the result that would follow. Furthermore, it would impact a number of constituents that could most benefit from access to advanced technologies. San Diego, for example, notes that public safety is in desperate need of high-speed mobile data capability, the possibility of which would be severely impacted by the proposed restriction.[31] Moreover, it would limit the ability of utilities and other critical infrastructure entities to upgrade their systems, and would discriminate against existing systems.[32] This result simply cannot be reconciled with a regulatory philosophy that values spectrum efficiency, innovation, and technological advancement, and must therefore not be adopted.

C. The Envisioned Waiver Process Is Burdensome And Unnecessary

The Consensus Plan also suggests that a waiver would be necessary for a licensee in the newly designated "non-cellular" band to implement a "cellular-like" system architecture.[33] First, as illustrated above, it has not been shown that a "cellular" system, as defined by the Consensus Plan, would necessarily result in the creation of interference to public safety. Further, the Consensus Plan suggests that such a waiver would have to "demonstrate conclusively that its system architecture will not recreate interference problems for public safety communications system, including through [sic] pre-

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Future Spectrum Use by the Energy, Water and Railroad Industries, DA 02-361 (filed March 6, 2002).

[31] Reply Comments of City of San Diego, WT Docket No. 02-55 at 3-4 (filed Aug. 7, 2002).

[32] UTC Reply Comments at 15.

[33] Consensus Plan at 10, n. 41.

application coordination with public safety frequency coordinators and licenses in the contemplated area of operation."[34]

This suggestion is extraordinarily burdensome and would discourage system upgrades. The showing suggested by the Consensus Plan is well beyond what would be normally required in a waiver situation, and would require a significant cost outlay with uncertain result. Notably, the parties to the Consensus Plan have not even attempted to define the nature of Nextel's interference to Public Safety, yet they would ask all other licensees to demonstrate that they will not cause such interference. Proving a negative -- particularly when the object is not defined -- is an impossible task.

If, however, the Commission determines to adopt a plan in which cellular and non-cellular operations are spectrally separate, Entergy suggests that a certification or modified frequency application would be more appropriate. In this respect, a licensee wishing to implement an advanced system architecture could certify compliance with a set of criteria beforehand, rather than being required to submit a costly and time-consuming application for a rule waiver.

VIII. THE COMPROMISE PLAN STILL FAILS TO ADDRESS THE LACK OF EVIDENCE IN THE RECORD TO SUPPORT A MASS RELOCATION

The Consensus Plan continues to rely upon sparse, anecdotal evidence of public safety interference. Entergy noted in its comments and reply comments that the nature of the problem and the efficacy of the proposed solutions have not been adequately

[34] *Id.*

addressed.[35] Parties continue to differ with respect to the types of interference occurring and the prevalence of any given type. As Kenwood Communications stated previously, the "extent to which each of these problems contributes on a relative basis, and the individual contributors to the overall increase in interference to Public Safety and other services at 800 MHz have not been determined or studied on a technical basis."[36] Even after the reply comment phase in this proceeding, this statement remains true. As noted by the City of Baltimore, the record is incomplete on this matter, and "substantial questions of fact concerning the extent of the interference problem" remain.[37]

The Consensus Plan also fails to make up the deficit in information, and continues to rely on a smattering of isolated interference reports to justify its indiscriminate and nationwide rebanding proposal. While Entergy does not discount the importance of even one incident of interference, the APCO-gathered interference reports do not represent a scientific measure of the problem, and cannot be said to represent a problem of sufficient magnitude to warrant the costs and disruption of a mandatory retuning effort across the band.

Moreover, it has not been shown that rebanding will adequately remedy those incidents of interference that have been reported.[38] While Nextel stubbornly insists that the Consensus Plan will address interference caused by intermodulation products, its

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[35] *See* Comments of Entergy Corporation and Entergy Services, Inc., WT Docket No. 02-55 at 5-7 (filed May 6, 2002); Reply Comments of Entergy Corporation and Entergy Services, Inc., WT Docket No. 02-55 at 4-9 (filed Aug. 7, 2002).

[36] Comments of Kenwood Communications Corporation, WT Docket No. 02-55 at 3 (filed May 6, 2002).

[37] Reply Comments of City of Baltimore, WT Docket No. 02-55 at 3 (filed Aug. 7, 2002).

[38] *See, e.g.*, Reply Comments to the Proposed "Consensus Plan" of the County of Maui, WT Docket No. 02-55 at 3 (filed Sept. 23, 2002).

analysis fails to account for those public safety systems that are located or will be relocated outside of the proposed NPSPAC allocation, and also fails adequately to account for the interference potential of fifth order IM products. Furthermore, the Consensus plan does not address receiver overload, desense problems or interference resulting from the use of hybrid combiners.

IX. CONCLUSION

The Consensus Plan is flawed and must not be adopted. It fails to address a number of key issues, including the predictability in the relocation process and comparability of replacement spectrum. Further, it fails to adequately protect the rights of incumbents by delegating control of the Plan's implementation to parties that have serious conflicts of interest or are otherwise unqualified to implement the plan. Affected licensees must therefore have specific, enumerated rights in order to protect their communications systems and the critical operations they support. Moreover, Entergy believes that the estimated timeframe for completion is not attainable given the sequential nature of the plan. Funding also remains an issue, and the Plan has failed to remedy this defect. Finally, the five-year licensing preference and the limitations on the "non-cellular" allocation are unwarranted and unsupported in the record.

WHEREFORE, THE PREMISES CONSIDERED, Entergy respectfully requests that the Commission consider these Further Comments and proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

ENTERGY CORPORATION AND
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Dated: September 23, 2002

CERTIFICATE OF SERVICE

I, Christine S. Biso, do hereby certify that on this 23rd day of September, 2002, I caused a copy of the foregoing "Further Comments of Entergy Corporation and Entergy Services, Inc." to be hand-delivered to each of the following:

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